LOH MIN-JIANN v. MAMMOTH EMPIRE LAND SDN BHD

HIGH COURT MALAYA, SHAH ALAM
TEE GEOK HOCK JC
[CIVIL SUIT NO: BA-22NCvC-214-05-2021]
15 FEBRUARY 2022

Abstract – *A judgment on admission of facts granted under O. 27 of the Rules of Court 2012, when granted by the court, is a final judgment on the item of claim in respect of which it is granted. Therefore, a plaintiff who has applied for and obtained judgment under O. 27 based on the defendant's admission of a lesser amount of the particular item of claim than the plaintiff's pleaded amount is not entitled to proceed to full trial for the balance of the pleaded amount for the same item of claim.*

CIVIL PROCEDURE: *Judgments and orders – Judgment on admission of facts – Claim for liquidated damages – Delay in delivery of vacant possession of property unit and delay in completion of common facilities – Plaintiff applied for and obtained judgment based on defendant's admission of lesser amount of item of claim than plaintiff's pleaded amount – Whether entitled to proceed to full trial for balance of pleaded amount for same item of claim – Whether judgment on admission of facts final judgment – Rules of Court 2012, O. 27*

The plaintiff, the purchaser of a property unit in a stratified development, sued the defendant/developer for liquidated damages of RM999,921.62 for the delay in the delivery of the vacant possession of the property unit and RM199,992.72 for the delay in the completion of the common facilities. The defendant denied the plaintiff's claim and contended that the plaintiff's computation was erroneous and inflated. The defendant pleaded that the computation of liquidated damages should be from 10 March 2015 to 17 March 2020 for late delivery of vacant possession and from 10 March 2015 to 4 January 2016 for late completion of the common facilities, totalling to RM891,892.39. The plaintiff applied for judgment based on admission of facts in the sum of RM891,892.39, under O. 27 of the Rules of Court 2012 ('ROC'). This court allowed the plaintiff's application and did not give any case management direction or set any further case management date for the case. At the plaintiff's request, a clarification was held whereby the plaintiff asked this court to fix case management date and issue case management direction for the balance amount of the same item of claim. The issue that arose was whether the plaintiff, who had applied for and obtained judgment under O. 27 of the ROC based on the defendant's admission of a lesser amount of the particular item of claim than the plaintiff's pleaded amount, was still entitled to proceed to full trial for the balance of the pleaded amount for the same item of claim.

Held (plaintiff not entitled to proceed to full trial for balance of pleaded amount for same item of claim):

(1) In pursuance of the main policy of expeditious and economical disposal of civil cases and avoiding duplication or repetition in judgments and decisions on the same question or item of claim, where the plaintiff pleads for X + Y amount in respect of a particular item of claim and the defendant admits X amount for that particular item of claim, the plaintiff has to elect either (i) to accept the defendant's admission as correct and take judgment on admission under O. 27 of the ROC; or (ii) reject the defendant's admission as correct by applying for O. 14 summary judgment for X + Y amount (if there is triable defence). In a situation where the plaintiff rejects the defendant's admission as correct, there is nothing in principle to prevent the plaintiff from applying for interim payment on the admitted part of claim amount under O. 22A of the ROC. (para 29)

(2) An attempt by the plaintiff to get two final judgments on the same item of claim by way of two interlocutory applications, apart from being contrary to the express words in the provisions of O. 27 r. 3 and O. 14 and being inconsistent with the main policy behind O. 34, appeared to be inconsistent with the general principles of law relating to doctrine of election, doctrine of merger of judgment and the doctrine of *res judicata* as applied by the courts. (para 30)

(3) This court held and clarified that the plaintiff who applied for and obtained judgment under O. 27 of the ROC based on the defendant's admission of a lesser amount of the particular item of claim than the plaintiff's pleaded amount, was not entitled to proceed to full trial for the balance of the pleaded amount for the same item of claim. As the plaintiff's only claim in the present suit was for liquidated damages comprising of two sub-items, this court had given judgment under O. 27 for the liquidated damages under both the sub-items, there was no other issue or question to go for full trial of the present action. As such, no case management date or direction was given after the O. 27 judgment on admission of facts had been given. (paras 39 & 40)

Case(s) referred to:

Amanah Raya Capital Sdn Bhd v. Hairuddin Hj Tahir & Ors [2012] 5 CLJ 651 HC ***(refd)***

Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd [1995] 3 CLJ 783 SC ***(refd)***

Bakti Insani Sdn Bhd (Dalam Penggulungan) v. Anjung Perkasa Sdn Bhd [2018] 1 LNS 697 HC ***(refd)***

David Chelliah v. Monorail Malaysia Technology Sdn Bhd & Anor [2005] 1 CLJ 589 CA ***(refd)***

Dr H K Fong Brainbuilder Pte Ltd v. SG-Maths Sdn Bhd & Ors [2021] 1 CLJ 155 CA ***(refd)***

Dr Lee Chong Meng v. Returning Officer (Abdul Rahman Abdullah) & Ors (No 1) [2000] 3 CLJ 519 HC ***(refd)***

Enmore Estates v. Darsan [1970] AC 497 ***(refd)***

Foo Loke Ying & Anor v. Television Broadcasts Ltd & Ors [1985] 1 CLJ 511; [1985] CLJ (Rep) 122 SC ***(refd)***
Hong Leong Finance Bhd v. Low Thiam Hoe & Another Appeal [2015] 8 CLJ 1 FC ***(refd)***
Josu Engineering Construction Sdn Bhd v. TSR Bina Sdn Bhd [2016] 1 CLJ 1 CA ***(refd)***
Kawan Lama Builders Sdn Bhd & Anor v. Syarikat Lumut Quarry Sdn Bhd [2021] 1 CLJ 313 CA ***(refd)***
Lai Soon Onn v. Chew Fei Meng & Other Appeals [2018] 10 CLJ 48 CA ***(refd)***
Lancashire Welders Ltd v. Harland & Wolff Ltd [1950] 2 All ER 1096 ***(refd)***
Lee Lee Cheng v. Seow Peng Kwang [1960] 1 MLJ 1 ***(refd)***
Low Hock Jee v. Mayban Finance Bhd [1996] 1 LNS 183 HC ***(refd)***
Orchard Circle Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Ors [2021] 1 CLJ 1 FC ***(refd)***
PJD Regency Sdn Bhd v. Tribunal Tuntutan Pembeli Rumah & Anor And Other Appeals [2021] 2 CLJ 441 FC ***(refd)***
Re Stringman (A Minor) [1994] 1 WLR 1653 ***(refd)***
Rex v. Bishop of Oxford (1879) 4 QBD 245 ***(refd)***
Ricci Burns Ltd v. Toole & Anor [1989] 1 WLR 993 ***(refd)***
Ruby Investment (Pte) Ltd v. Candipark Pte Ltd [1989] 1 LNS 84 ***(refd)***
Southwest Water Authority v. Rumbles [1985] 2 WLR 405 ***(refd)***

Legislation referred to:
Housing Development (Control and Licensing) Act 1966, s. 22C
Rules of Court 2012, O. 14 rr. 1(1), 3, 6, 8, O. 22A, O. 27 r. 3(1), O. 33 r. 2, O. 34 r. 1(1)

For the plaintiff - Tan Kian Khuang; M/s Bhadarul Baharain & Partners
For the defendant - Loo Ying Ning; M/s Shearn Delamore & Co

Reported by Lina E

JUDGMENT

Tee Geok Hock JC:

Introduction

[1] Applications for judgment on admission of facts under O. 27 of the Rules of Court 2012 and its predecessor court rules are rather rarely resorted to. In Malaysia, there appears to be no clear decided authority on the question of law at hand in our present case, namely whether the plaintiff who has applied for and obtained judgment under O. 27 based on the defendant's admission of a lesser amount of the particular item of claim than the plaintiff's pleaded amount is still entitled to proceed to full trial for the balance of the pleaded amount for the same item of claim.

[2] On 7 December 2021, this court held that the question of law should be answered in the negative.

[3] Being dissatisfied with the answer to the question of law, the plaintiff has appealed to the Court of Appeal. There is no appeal by the defendant against the said decision of this court.

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Facts In Brief

[4] The plaintiff, the purchaser of a property unit at a purchase price of RM1,738,000 in a stratified development, sued the defendant – developer for liquidated damages of RM999,921.62 for delay in the delivery of the vacant possession of the property unit and RM199,992.72 for delay in the completion of the common facilities.

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[5] In the defendant's statement of defence, the defendant denied that the plaintiff was entitled to the claims, and further pleaded that the plaintiff's computation of the amount of liquidated damages was erroneous and inflated. In addition, the defendant pleaded that the computation of the liquidated damages should be from 10 March 2015 to 17 March 2020 for late delivery of vacant possession and from 10 March 2015 to 4 January 2016 for late completion of the common facilities (para. 11 of the defence).

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[6] By notice of application under O. 27 of ROC 2012, the plaintiff applied for judgment based on admission of facts in the sum of RM891,892.39. This total amount of RM891,892.39 as liquidated damages was based on the defendant's computation of the liquidated damages from 10 March 2015 to 17 March 2020 for late delivery of vacant possession and from 10 March 2015 to 4 January 2016 for late completion of the common facilities (para. 11 of the defence).

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[7] In resisting the application under O. 27, the defendant put up various defences.

[8] On 7 December 2021, this court allowed the plaintiff's O. 27 application and gave judgment under O. 27 in favour of the plaintiff in the sum of RM891,892.39 as the liquidated damages, plus interest and costs. The brief grounds of the judgment included the following:

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(i) in an application for judgment on admission of facts which, like the criterion in an application for summary judgment, the defendant has to show a triable defence to justify the dismissal of the application;

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(ii) in the present case of claim for liquidated damages ("LAD") under the statutory Schedule H sale and purchase agreement, the plaintiff has proved that the property unit has not been delivered within the contractually-stipulated time and that the defendant has admitted in its defence (a) that the delivery of vacant possession of the parcel was on 9 September 2020; (b) that the plaintiff's entitlement to LAD in respect of delay in delivery of vacant possession of the parcel was from 10 March 2015 until 17 March 2020; (c) that the completion of the common facilities was on 4 January 2016; and (d) that the plaintiff's entitlement to LAD in respect of delay in completion of common facilities was from 10 March 2015 to 4 January 2016;

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(iii) the amounts of LAD claimed by the plaintiff in encl. 8 are the amounts computed on the purchase price stated in the sale and purchase agreement and the periods of delay admitted by the defendant;

(iv) the defendant has no triable defence on the argument regarding *locus standi*: see cl. 7 of the sale and purchase agreement and s. 22C of the Housing Development (Control and Licensing) Act 1966; and due notice has been given by the purchasers to the bank;

(v) the defendant has no triable defence on the argument regarding rebate of price and the calculation of LAD: see *PJD Regency* case (Federal Court);

(vi) as the plaintiffs have computed and claimed their LAD as from 10 March 2015 (the date extended by the Housing Ministry), the defendant has no triable defence on the argument regarding the extension granted;

(vii) Developer Interest Bearing Scheme (DIBS) is not a triable issue because (a) the specific statutory provisions on computation of LAD cannot be contracted out; (b) there is no clause in the sale and purchase agreement or any written document signed between the parties regarding revised computation of LAD on account of DIBS; (c) even if there were any such clause in the sale and purchase agreement or any written document signed between the parties regarding revised computation of LAD on account of DIBS, such clause or document would be null and void for contravention of the statute; and (d) in any event, the developer's costs of carrying the DIBS would most probably have been subsumed or assimilated into the purchase price stated in the sale and purchase agreement; and

(viii) the defendant has not shown any relevant defence which is triable.

[9] After the judgment has been given under O. 27, this court did not give any case management direction or set any further case management date for the case.

[10] Subsequently, at the plaintiff's request a clarification was held on 31 December 2021 whereby the plaintiff asked this court to fix case management date and issue case management directions for the balance amount of the same item of claim. To this request, this court clarified that after getting the judgment on admission of facts under O. 27 on the amount admitted by the defendant, the plaintiff could not proceed for full trial of the balance pleaded amount for the same item of claim. As there is only an appeal by the plaintiff relating to the said question of law relating to O. 27 and there is no appeal by the defendant against this court's said decision or any part thereof, the grounds of judgment herein will focus on the said question of law relating to O. 27 and matters relevant to the said question of law.

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Relevant Provisions Of The ROC 2012

[11] Order 14 rr. 1, 3, 6 and 8 of the Rules of Court 2012 ("ROC 2012") provides as follows:

Application by plaintiff for summary judgment (O. 14 r. 1)

B (1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, *on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim*, or has no defence to such a claim or part thereof except as to the amount of any damages claimed, apply to the court for judgment against that C defendant.

Judgment for plaintiff (O. 14 r. 3)

3. (1) Unless on the hearing of an application under rule 1 either the court dismisses the application or the defendant satisfies the court with respect to the claim, or the part of a claim, to which the application relates that D there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part, *the court may give such judgment* for the plaintiff against that *defendant on that claim or part* as may be just having regard to the nature of the remedy or relief claimed.

E Directions (O. 14 r. 6)

6. (1) Where the court:

(a) *orders that a defendant* or plaintiff *has leave* (whether conditional or unconditional) *to defend an action or counterclaim, as the case may be, with respect to a claim or a part of a claim*; or F

(b) gives judgment for a plaintiff or a defendant on a claim or part of a claim but also orders that execution of the judgment be stayed pending the trial of a counterclaim or of the action, as the case may be,

G *the court may give directions as to the further conduct of the action and Order 34 shall apply* as if it was an application under rule 1 of this Order or rule 5 thereof, as the case may be.

Right to proceed with residue of action or counterclaim (O. 14 r. 8)

8. (1) *Where* on an application under rule 1 *the plaintiff obtains judgment on* H *a claim or a part of a claim against any defendant, he may proceed with the action in respect of any other claim or in respect of the remainder of the claim or against any other defendant*.

(emphasis added)

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[12] Order 27 r. 3 of the ROC 2012 provides as follows:

> **Judgment on admission of facts (O. 27 r. 3)**
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> 3. (1) Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the court for such judgment or order as upon those admissions he may be entitled to, **without waiting for the determination of any other question between the parties**, and the court may give such judgment, or make such order, on the application as it thinks just.
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> (emphasis added)

[13] A main policy of the rules of court in the regime of active case management and procedural control of cases by the court is to facilitate the fair, expeditious and economical disposal of civil cases, as codified in O. 34 r. 1(1) of the ROC 2012 in the following words which came into force about 20 years ago:

> **Orders and directions for just, expeditious and economical disposal of proceedings (O. 34 r. 1)**
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> 1. (1) Notwithstanding anything in these Rules, the court may, at any time after the commencement of proceedings, of its own motion, direct any party or parties to the proceedings to appear before the court, in order that the court may make such order or give such direction as it thinks fit so that:
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> (a) all matters which must or can be dealt with on interlocutory applications and have not already been dealt with may so far as possible be dealt with; and
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> (b) such directions may be given as to the future course of the action as appear best adapted to secure the **just, expeditious and economical disposal** thereof.
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> (emphasis added)

Interpretation Of Statute

[14] Aids to the interpretation of statutes can be derived from other decisions of the appellate courts on specific principles of statutory interpretation including those summarised below:

(i) the Legislature does not legislate in vain, and the interpretation of words in a section of the statute should not to the extent of rendering redundant or superfluous other words used in another section in the same statute: Eusoffe Abdoolcader SCJ in *Foo Loke Ying & Anor v. Television Broadcasts Ltd & Ors* [1985] 1 CLJ 511; [1985] CLJ (Rep) 122; [1985] 2 MLJ 35, following House of Lords in *Southwest Water Authority v. Rumbles* [1985] 2 WLR 405 at 411. In *Foo Loke Ying*, the Supreme Court held that all words in a statute are to be considered; on presumption that the Parliament does nothing in vain, the court must endeavour to give

significance to every words of an enactment and it is presumed that if a word or phrase appears in a statute it was put there for a purpose. See also Privy Council decision in *Enmore Estates v. Darsan* [1970] AC 497 at p. 506. The need to interpret a particular section of the statute together with the other sections of the same statute is also emphasised by the Federal Court in the recent judgment delivered by Zabariah Mohd Yusof FCJ in *Orchard Circle Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Ors* [2021] 1 CLJ 1; [2021] 1 MLJ 180 at paras. [34], [35], [50] to [54] of the reported judgment.

(ii) a statute ought to be so construed that, if it can be prevented, no clause or sentence or words shall be superfluous, void or insignificant: per Cockburn CJ in *Rex v. Bishop of Oxford* (1879) 4 QBD 245, 5 App Cas 214;

(iii) where different words are used in a statute, they refer to different things; this is particularly so when the different words are used repeatedly: per Thomson CJ in *Lee Lee Cheng v. Seow Peng Kwang* [1960] 1 MLJ 1 at p. 3 (Court of Appeal). This is echoed by the judgments of our Court of Appeal in *Lai Soon Onn v. Chew Fei Meng & Other Appeals* [2018] 10 CLJ 48 at 66, *Dr Lee Chong Meng v. Returning Officer (Abdul Rahman Abdullah) & Ors (No 1)* [2000] 3 CLJ 519 at 527 and in *Dr H K Fong Brainbuilder Pte Ltd v. SG-Maths Sdn Bhd & Ors* [2021] 1 CLJ 155; [2021] 1 MLJ 549.

[15] The governing principle for interpretation of the post-2000 amended version of the Rules of Court 2012 is laid down by the Federal Court in *Hong Leong Finance Bhd v. Low Thiam Hoe & Another Appeal* [2015] 8 CLJ 1; [2016] 1 MLJ 301 where in the Federal Court also emphasised the importance of the policy behind O. 34 court-controlled system of administration of justice in the interpretation of the court rules other than O. 34. In *Hong Leong Finance Bhd v. Low Thiam Hoe* the Federal Court in the judgment delivered by Zulkefli CJ (Malaya) held as follows:

> [17] In *Yamaha Motor*, the Federal Court amongst others considered the effect of O. 20 r. 5 of the Rules of the High Court 1980 (RHC 1980) (now known as Rules of Court 2012 ('RC 2012')). The facts in *Yamaha Motor* showed that the application to amend the statement of claim was made about seven months after the original statement of claim was amended and the trial has not commenced.
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> [18] It is pertinent to note that *Yamaha Motor* was decided under the old RHC 1980. The civil procedure has since then changed with the introduction of the pre-trial case management in the year 2000 under O. 34 of the RHC 1980 *(22 September 2000) and now under O. 34 of the RC 2012 (1 August 2012). Nowadays the court recognises especially under the new case management regime that a different approach needs to be taken to prevent delay in the progress of a case to trial and for its completion. The progress of the case is no longer left in the hands of the litigants but with the court in the driver's seat*

(see the case of *Syed Omar bin Syed Mohamed v. Perbadanan Nasional Bhd* [2013] 1 MLJ 461; [2012] 9 CLJ 557). *In particular when an application to amend the pleading is made at a very late stage as was done in the present case, the principles in Yamaha Motor ought not to be the sole consideration. This is because an order for compensation by payment of costs in such a case may not be an adequate remedy and it would also disrupt the administration of justice which affects the courts, the parties and the other users of the judicial process* (see the case of *Conlay Construction Sdn Bhd v. Perembun (M) Sdn Bhd* [2014] 1 MLJ 80).

(emphasis added)

[16] In the considered view of this court, the Federal Court case of *Hong Leong Finance Bhd v. Low Thiam Hoe & Another Appeal* (*supra*) exemplifies the relevance and need for interpretation of the various rules of court in the ROC 2012 in light of the new policy of court-controlled litigations under O. 34 of ROC 2012 instead of blindly or rigidly following the previous court decisions which interpreted the court rules prior to the introduction of O. 34 court-controlled case management and litigations.

Interpretation Of O. 27 OF ROC 2012

[17] Order 27 r. 3(1) provides that "where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the court may give such judgment, or make such order, on the application as it thinks just". This rule seems to make a difference in treatment between the admission of facts on a particular issue or question and the disputed facts on the other questions or issues. Where admission of facts entitles a party to judgment on a particular question or issue based upon such admission, the party is entitled to judgment on the particular issue or question. As for the other issues or questions, awaiting for their determination by trial does not deprive the party to judgment on the particular issue or question in respect of which admission of facts has been made by the other party.

[18] The choice of express words used in O. 27 r. 3(1) seems to suggest that after the judgment on admission of facts has been given on the particular issue or question, the determination by trial will be for the other issues or questions and not the very same question in respect of which the judgment has been given based on the admission of facts.

This interpretation is supported by the express words in O. 14 (summary judgment) which are different from those in O. 27 r. 3(1). Order 14 r. 1(1) enables a plaintiff to apply for summary judgment in situation including a situation where "the defendant has no defence to a claim included in the writ, or to a particular part of such a claim". Order 14 r. 3 provides that "the court may give such judgment for the plaintiff against that defendant on that claim

or part" in an application for summary judgment under O. 14. Order 14 r. 8 expressly confers the right to proceed with residue of action or counterclaim in the following words:

> 8. (1) Where on an application under rule 1 *the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action in respect of any other claim or in respect of the remainder of the claim or against any other defendant*.
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> (emphasis added)

[19] In contrast with O. 14 provisions, O. 27 r. 3(1) provides for the determination by trial of the other issues or question after the judgment on admission of facts has been given on a particular issue or question. Order 27 r. 3(1) by its wording does not confer any right upon the plaintiff to proceed with the residue of a claim or issue after having obtained judgment on that claim or issue based upon the admission of facts.

[20] There are a number of decided cases regarding the general principles and other aspects of judgment on admission of facts under O. 27 r. 3 but not specifically on the question of law at hand, namely whether the plaintiff who has applied for and obtained judgment under O. 27 based on the defendant's admission of a lesser amount of the particular item of claim than the plaintiff's pleaded amount is still entitled to proceed to full trial for the balance of the pleaded amount for the same item of claim. Such decided cases regarding the general principles and other aspects of judgment on admission of facts include:

(i) *Ruby Investment (Pte) Ltd v. Candipark Pte Ltd* (Coomaraswamy J) (High Court, Singapore) [1989] 1 LNS 84:

> I note that the admission is alleged to be expressed in or implied from the confirmation letters of 28 May 1982, 27 August 1984 and 4 September 1984 from the appellants' auditors to the respondents. These are informal admissions as opposed to formal admissions in pleadings. Hence, the appellants are able subsequently to seek to explain away or contradict these 'admissions' and the court is to consider the evidentiary weight to be given to these 'admissions'.
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> Before deciding on the question of whether the confirmation letters constitute an admission by the appellants and the weight to be given to such admission, I am perturbed by the fact that the admission pertaining to the deposit is one which is inextricably intertwined with the issues at the trial, *ie*, whether the appellants are entitled to forfeit the deposit which in turn will resolve around a finding of fact by the trial judge as to whether the oral representations as alleged by the respondents were in fact made by the appellants. If judgment on admissions is given, then it follows that the basis of the trial of this issue will be extinguished. Furthermore, it would be an anomalous situation if the respondents should be given judgment on the admissions purportedly expressed or implied from the confirmation letters if

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> the trial judge subsequently, as a finding of act, holds that no oral representations were made by the appellants and that the respondents' purported rescission was wrongful and amounted to a repudiation of the agreement to lease and flowing therefrom the appellants were entitled to forfeit the deposit.

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This cited with approval by our Court of Appeal in *Kawan Lama Builders Sdn Bhd & Anor v. Syarikat Lumut Quarry Sdn Bhd* [2021] 1 CLJ 313.

(ii) Court of Appeal's decision in *Kawan Lama Builders Sdn Bhd & Anor v. Syarikat Lumut Quarry Sdn Bhd* [2021] 1 CLJ 313 wherein Hanipah Farikullah JCA held:

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> [24] In our view, a court can pass a judgment under O. 27 r. 3 on the basis that the statement made by the parties on any documents. The only condition is that there must be clear, unequivocal and unambiguous.
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> [25] In *Re-Registered Trade Mark "Certina"* [1970] 44 ALJR 191, J Barwick Co, speaking on the rule of the High Court which is expressed in equivalent terms to our O. 27 r. 3, said at p. 192:

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> > The powers which the Rules give to a Justice in Chambers must be exercised with great caution ... but in a clear case a proper exercise of the poser will obviate the delay involved in a hearing and will save unnecessary expense.

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> [26] It is, therefore, necessary that the fact or facts admitted be identified with clarity. The admission must be clear and not simply evidence of fact upon which the plaintiff would have to rely to establish his cause of action (see *Vithal Kumar* (*supra*).

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> [27] As was correctly stated by the learned JC in his judgment, this rule entitles a party in receipt of clear and explicit admission of fact from an opponent, to apply to court for "speedy judgment" upon the said admission by way of a summary procedure, without having to wait for the determination of any other outstanding issues between the parties (see *Vasanthi Rajamanikam v. Kalaiselvi Perumal* [2012] 9 CLJ 912; [2012] 6 AMR 228; *Global Destar (M) Sdn Bhd v. Kuala Lumpur Glass Manufacturers Co Sdn Bhd* [2004] 5 CLJ 167; *Vong Ban Hin v. Laksamana Realty Sdn Bhd* [2003] 3 CLJ 129; *Carabao Exports Pty Ltd v. Online Management Consultants Sdn Bhd & Ors* [1988] 1 LNS 88; [1988] 3 MLJ 271; and *Vithal Kumar Jayaraman v. Azman Md Nor* [2010] 3 CLJ 332; [2010] 2 MLJ 67).

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> [28] As to what is an admission upon which the court will be prepared to act on an application under O. 27 r. 3, the most useful case is the decision of the High Court in *Perwira Habib Bank (M) Bhd v. Hj Abdullah Hj Sulaiman & Anor* [1985] 2 CLJ 489; [1985] CLJ (Rep) 639. The case concerns a question whether what was stated was an admission of fact and if so whether that admission entitled the applying party to a judgment or order. The facts of the case are as follows. The

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defendants were sued as guarantors of a customer of the plaintiff bank. Judgment in default was entered against the second-named defendant. The first defendant entered an appearance and filed a statement of defence. Thereafter, the first defendant's solicitors wrote a letter to the plaintiff's solicitors which was not marked "without prejudice", proposing that the first defendant be allowed to pay the judgment sum by monthly instalments of RM10,000. The plaintiffs then sought to obtain summary judgment on the basis that pursuant to O. 27 of the Rules of the High Court 1980 (RHC 1980) the letter amounted to an admission of the plaintiffs' claim. This application was dismissed with costs by the Senior Assistant Registrar.

[29] VC George J (as he then was) held as follows:

(1) Whether the letter was written before or after the statement defence was filed is not the point. The question is whether what is stated is an admission of fact and if so whether that admission entitles the applying party to a judgment or order.

(2) The admission must amount to an unequivocal admission before the judgment by the summary procedure provided by O. 27 r. 3 can be granted.

(3) The admission may be implied from all the circumstances.

(4) In the instant case, "I will pay" does not necessarily imply "as I am legally obliged to do", hence there was no unequivocal admission for it to pronounce judgment by the summary procedure provided by Order 27 rule 3 of the RHC 1980.

[30] *Perwira Habib Bank* (*supra*) has been followed by a number of cases. (See *Vong Ban Hin v. Laksamana Realty Sdn Bhd* [2003] 3 CLJ 129; *RHB Bank Bhd v. Wembley Industries Holdings* Bhd [2012] 1 LNS 955; *Hasrat Usaha Sdn Bhd v. Pati Sdn Bhd* [2011] 2 CLJ 863; *Metroplex Holdings Sdn Bhd v. Commerce International Merchant Bankers Bhd* [2013] 8 CLJ 329; and *Affin Bank Bhd v. Successcom Enterprise Sdn Bhd* [2009] 4 CLJ 764).

[31] More importantly, a court under the provision of this rule will not allow a final judgment to be entered unless the admissions are clear and unequivocal nor will the judgment be allowed to be entered where there is a serious question of law or fact to be argued (see *Affin Bank Bhd v. Successcom Enterprise Sdn Bhd* (*supra*); *Perwira Habib Bank* (*supra*); *Vithal Kumar* (*supra*); *Mersey, etc Co v. Shuttleworth* (1883) 11 QBD 531; *Haron Mohammed Zaid v. Central Securities (Holdings) Bhd* [1982] 3 WLR 134; and *Hasrat Usaha Sdn Bhd v. Pati Sdn Bhd* [2011] 2 CLJ 863; [2010] MLJU 846).

(iii) per Mohd Zawawi Salleh J in *Amanah Raya Capital Sdn Bhd v. Hairuddin Hj Tahir & Ors* [2012] 5 CLJ 651:

[13] Conveniently, Zulkefli Makinudin JCA (as he then was) has summarised the concept of O. 27 in *Affin Bank Bhd v. Successcom Enterprise Sdn Bhd* [2009] 4 CLJ 764 when he said:

> In an application for judgment based on admission it is a principle of law that the court has power to enter judgment against a defendant based on an admission of facts made on pleadings or otherwise under O. 27 r. 3 of the RHC 1980. However, it is not a matter of right that a plaintiff can obtain judgment based on an admission of facts under O. 27 r. 3 of the RHC 1980. The court has a discretion as to whether judgment should and such discretion is exercised depending on the circumstances of the case. (See the case of *In Re Wright Kirke v. North* [1895] 2 Ch. 747). The court will only allow judgment to be entered under O. 27 r. 3 of the RHC 1980 if there is an unequivocal admission of fact which entitles the plaintiff to enter judgment against the defendant. If liability turns on a question of law or mixed fact and law, judgment cannot be obtained. (See the case of *Perwira Habib Bank (M) Bhd v. Hj Abdullah Hj Sulaiman & Anor.* [1985] 2 CLJ 489; [1985] CLJ (Rep) 639). As such, if a plaintiff cannot show that all the components of his cause of action have been admitted, the plaintiff is not entitled to judgment under O. 27 r. 3 of the RHC 1980. The court will not exercise its discretion to allow judgment to be entered under O. 27 r. 3 of the RHC 1980 if there are issues to be tried or there is a defence to the action.
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> [14] In other words, for this application to succeed, the plaintiff must satisfy the court that the alleged admission is unequivocal, positive, clear and specific. This was enunciated by VC George J in *Perwira Habib Bank (M) Bhd v. Hj Abdullah Hj Sulaiman & Anor* [1985] 2 CLJ 489; [1985] CLJ (Rep) 639 ...

[21] Of the case authorities cited by the parties, there is only one decision of the High Court which held that after having obtained O. 27 judgment on admission of facts for part of the amount in one particular claim item, the plaintiff was still at liberty to claim for the balance amount of the same claim item. The case is *Low Hock Jee v. Mayban Finance Bhd* [1996] 1 LNS 183; [1996] MLJU 187, a decision of Suleiman J. In *Low Hock Jee v. Mayban Finance* the learned judge did not interpret or analyse the provisions of the court rules in O. 27 but merely followed an English Court of Appeal's decision in *Lancashire Welders Ltd v. Harland & Wolff Ltd* [1950] 2 All ER 1096 at p. 1099. Both the High Court's said decision and the English Court of Appeal's said decision are of persuasive authorities but not binding upon this court.

[22] In *Lancashire Welders Ltd v. Harland & Wolff Ltd* the English Court of Appeal did not analyse or interpret the provisions of O. 27 of the English court rules but held that there was no sensible reason for denying the plaintiff the trial for the balance amount of the same claim after having given judgment for part of the claim on admission of facts.

[23] The question here is whether this court should follow the English Court of Appeal's said decision which was reported in 1950.

[24] Between 1950 and 2021, the court rules in both England and Malaysia have undergone quite a number of major changes and amendments. In the 1950s the court gave the litigants control of the civil proceedings and tremendous liberty in the manner in which and the time frame within which they wanted to conduct their civil litigations in court, and delays in disposal of civil cases were generally tolerated. With the advent of the new philosophy of court-controlled civil proceedings *via* the court's case managements under O. 34 of ROC 2012 as a result of the tremendous increases in the number of court cases and the increasing complexity and complications in court cases, the intensive case management by the court in the diligent and constant control of the civil proceedings and the main objective of just, expeditious and economical disposal of civil cases have become a central feature of the civil procedure in the courts. Order 14A, O. 33 r. 2 and several amendments to other rules of court are also included to empower the court to carry out just, expeditious and economical disposal of civil cases. Justice in this context is now viewed in the macro perspective of the totality of civil litigations and the overall interest of the system of administration of justice as well, and not merely from the microscopic view of the one or two litigants in a particular civil case.

[25] In *Hong Leong Finance Bhd v. Low Thiam Hoe & Another Appeal* (*supra*) the Federal Court has set the platform regarding the relevance and need for interpretation of the various rules of court in the ROC 2012 in light of the new policy of court-controlled litigations under O. 34 of ROC 2012 instead of blindly or rigidly following the previous court decisions which interpreted the court rules prior to the introduction of O. 34 court-controlled case management and litigations. Such need and relevance are by no means limited to the question of amendment of pleadings which was the subject-matter in *Hong Leong Finance Bhd v. Low Thiam Hoe & Another Appeal* (*supra*).

[26] Applying the principles of statutory interpretation summarised in para. 13 above, the express words used in O. 27 r. 3(1) are indicative that after the judgment on admission of facts has been given on the particular issue or question, the determination by trial will be for the other issues or questions and not the very same question in respect of which the judgment has been given based on the admission of facts. This interpretation is supported by the express words in O. 14 (summary judgment) which are very different from those in O. 27 r. 3(1). Order 14 r. 1(1) enables a plaintiff to apply for summary judgment in situation including a situation where "the defendant has no defence to a claim included in the writ, or to a particular part of such a claim". Order 14 r. 3 provides that "the court may give such judgment for the plaintiff against that defendant on that claim or part" in an application for summary judgment under O. 14. Order 14 r. 8 expressly confers the right to proceed with residue of action or counterclaim. It can be inferred that if the court rules intended that after the judgment on admission of facts has been given on the particular issue or question, the determination

by trial will be for the very same question in respect of which the judgment has been given based on the admission of facts, then the wording of O. 27 would have been the same or similar to that of O. 14 to preserve the right of the plaintiff to proceed with the balance amount in respect of the same question or item of claim.

[27] An interpretation of O. 27 r. 3 with the words "without waiting for the determination of any other question between the parties" to mean the same effect as O. 14 r. 8 with the words "Where on an application under rule 1 the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action in respect of any other claim or in respect of the remainder of the claim or against any other defendant" would tantamount to reading additional words into O. 27 r. 3 and would also render the word "other" in the expression "any other question" in O. 27 r. 3 to be otiose, void, insignificant or uselessly misleading. Such interpretation would be contrary to the settled principles of statutory interpretation.

[28] If the court were to interpret the wording of O. 27 r. 3 to give the plaintiff the right to proceed with the balance amount in respect of the same question or item of claim, then there would be nothing in principle to prohibit the plaintiff from proceeding to make another interlocutory application under O. 14 for summary judgment for the balance amount in respect of the same question or item of claim after having been given judgment for part thereof under O. 27 based on admission of facts. Such interpretation would be inconsistent with the main policy of O. 34 and the court rules in facilitating expeditious and economical disposal of civil cases. Duplicity and repetition in interlocutory applications for judgments in respect of the same item of claim or same question is contrary to the principles and objectives of the court rules.

[29] In pursuance of the main policy of expeditious and economical disposal of civil cases and of avoiding duplication or repetition in judgments and decisions on the same question or item of claim, this court holds that where the plaintiff pleads for X + Y amount in respect of a particular item of claim and the defendant admits X amount for that particular item of claim, the plaintiff has to elect either (i) accept the defendant's admission as correct and take judgment on admission under O. 27, or (ii) reject the defendant's admission as correct by applying for O. 14 summary judgment for X + Y amount (if there is no triable defence) or go for trial on the claim for X + Y amount (if there is triable defence). In a situation where the plaintiff rejects the defendant's admission as correct, there is nothing in principle to prevent the plaintiff from applying for interim payment on the admitted part of claim amount under O. 22A of ROC 2012.

[30] An attempt by the plaintiff to get two final judgments on the same item of claim by way of two interlocutory applications, apart from being contrary to the express words in the provisions of O. 27 r. 3 and O. 14 and being inconsistent with the main policy behind O. 34, appears to be inconsistent with the general principles of law relating to doctrine of election, doctrine of merger of judgment and the doctrine of *res judicata* as applied by the courts.

[31] In *Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783; [1995] 3 MLJ 189 our apex court *inter alia* held as:

> Thus, there are in fact two kinds of estoppel *per rem judicatum*. The first type relates to cause of action estoppel and the second, to issue estoppel, which is a development from the first type.
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> The cause of action estoppel arises when rights or liabilities involving a particular right to take a particular action in court for a particular remedy are determined in a final judgment and such right of action *ie*, the cause of action, merges into the said final judgment; in layman's language, the cause of action has turned into the said final judgment. The said cause of action may not be re-litigated between the same parties because it is *res judicata*.
>
> In order to prevent multiplicity of actions and also in order to protect the underlying rationales of estoppel *per rem judicatum* and not to act against them, such estoppel of cause of action has been extended to all other causes of action (based on the same facts or issues) which should have been litigated or asserted in the original earlier action resulting in the final judgment and which were not either deliberately or due to inadvertence. A few cases below will illustrate the point.
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> ...
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> In *Conquer v. Boot* [1928] 2 KB 336 the plaintiff obtained judgment after a contest in respect of a breach of warranty to build a house in a good and workmanlike manner. Subsequent to the judgment the plaintiff suffered further loss or further loss emerged by virtue of the same breach of warranty. Such further loss might not have been apparent at the time of first action. It was held that the cause of action was *res judicata* and he was estopped from asserting for the second time the same breach of warranty. It is interesting to note that in the second action, the same breach was described differently but this did not prevent the estoppel from operating.
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> In *Chamberlain v. Deputy Commissioner of Taxation* [1988] 62 ALJR 324, the High Court of Australia applied the doctrine of *res judicata* to prevent recovery of the balance of understated tax as a result of previously omitting a last digit of zero.
>
> *... It is particularly important to bear in mind the question of the public policy that there should be finality in litigation in conjunction with the exploding population; the increasing sophistication of the populace with the law and with the expanding resources of the courts being found always one step behind the resulting increase in litigation.*

...

Thus, in *SCF Finance Co Ltd v. Masri & Another (No. 3)* [1987] QB 1028 the English Court of Appeal held that even a reservation of an issue by a party in a previous proceeding was ineffective to prevent the estoppel from arising against the said party, where the said party had pleaded that issue but elected not to proceed on the issue in the previous proceeding. It was held she was not entitled to assert that issue afresh in subsequent proceedings, even if that issue was not heard and determined and it was even "reserved"...

[32] On the doctrine of *res judicata* and merger of judgment the Federal Court in *Orchard Circle Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Ors* [2021] 1 CLJ 1 held as follows:

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[78] The issues regarding the validity of the acquisition proceedings and whether Orchard Circle is the rightful proprietor of the said lands were issues before the learned judge in the first judicial review proceedings, premised on the reliefs sought for in the same. The current reliefs sought by Orchard Circle in the second judicial review application are the same reliefs which had been denied by Hinshawati Shariff J in the first judicial review application. Hence the issues have been disposed of in finality by parties then. It would be an abuse of process to allow Orchard Circle to renew its challenge on the propriety of the land acquisition proceedings when it challenged Form D in the second judicial review proceedings. This would amount to a back door appeal against the High Court order dated 10 December 2010 in the first judicial review application.

Peh Swee Chin FCJ in *Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783 in delivering the judgment of the court explained the concept of *res judicata* which means that when a matter adjudged, and its significance lies in its effect of creating an estoppel *per rem judicature*. When a matter between two parties has been adjudicated by a court of competent jurisdiction, the parties and their privies are not permitted to litigate once more the *res judicata* as the judgment becomes the truth between the parties. The rationale is that there should be finality in litigation and that no one should be vexed twice for the same cause or issue.

[79] For the doctrine to apply, the same issue must have been raised and decided in an earlier proceeding or action in which the parties are represented. It is not open for the same issue to be litigated afresh between the same parties. Lord Sumption sitting in the Supreme Court in *Virgin Atlantic Airways Ltd v. Zodiac Seats UK Limited* [2013] UKSC 46, described the doctrine as:

> ... a portmanteau term which is used to describe a number of different legal principles with different judicial origins.

[80] The thrust of the doctrine is to prevent a party from re-litigating an issue or a defence which has already been determined (known as cause of action estoppel or issue estoppel) or which could have previously been

litigated. The latter principle had been established in the case of *Henderson v. Henderson* 1843 3 Hare 100 (and ensured, as a matter of important public policy, the finality of judgments so as to prevent a party from being vexed twice and a waste of judicial resources. As it is not always easy to identify where one concept begins and another ends, Lord Sumption (in delivering the unanimous judgment of the Supreme Court) in the *Virgin Atlantic* case gave some clarification to the term with identifying the six principles which make up the doctrine, which are:

(i) a party is prevented from bringing subsequent proceedings to challenge an outcome that has already been decided (cause of action estoppel);

(ii) if a claimant succeeds in the first action and does not appeal the outcome, he may not bring a subsequent action on the same cause of action (*ie*, to recover further damages);

(iii) **the doctrine of merger treats a cause of action as having been extinguished once judgment has been provided and accordingly the claimant's only right is the judgment itself**;

(iv) a party may not bring subsequent proceedings on an issue that has already been determined (issue estoppel);

(v) a party may not bring subsequent proceedings which should and could have been dealt with in earlier proceedings (the *'Henderson v. Henderson*' principle);

(vi) There is a general procedural rule against abusive proceedings.

It must also be shown that the earlier judgment necessarily and with precision determined the point in issues to constitute *res judicata*. (See *Hoystead v. Taxation Commissioner* [1926] AC 155; *Carl-Zeiss-Stiftung v. Rayner & Keeler Ltd & Ors* [1966] 2 All ER 536 at p. 565; *Tong Lee Hwa & Anor v. Lee Yoke San* [1978] 1 LNS 218; [1979] 1 MLJ 24)

(emphasis added)

[33] See Mee Chun J (now JCA) in *Bakti Insani Sdn Bhd (Dalam Penggulungan) v. Anjung Perkasa Sdn Bhd* [2018] 1 LNS 697 said this regarding the doctrine of merger of judgment:

[18] As a result of the breach, plaintiff elected to claim for indemnity against defendant when JID was recorded. With the election came the relinquishing of any other remedies available to plaintiff. There is clear authority for this proposition which can be found in *Dato' Sivananthan Shanmugam v. Artisan Fokus Sdn Bhd* [2015] 2 CLJ 1062 where at page 1072 was stated as follows.

> [17] HTF had elected to commence the HTF suit against Cosmotine which ended with the summary judgment being recorded. The continuation proceedings against the Appellant **has clearly violated the doctrine of election**, the concept which is ingrained in our legal system and common law that an individual can either opt for the choice of remedies or relinquish it. It is trite law and, indeed, a fundamental tenet of law that where a person has determined to follow one of his

remedies and has communicated it to the other side in such a way as to lead the opposite party to believe that he has made that choice, he has completed his election and can go no further (see the House of Lords decision in *Benjamin Scarf v. Alfred George Jardine* [1881-81] 7 Appeal Cases 345).

[18] The options which were available to HTF and the Respondent were either:

(a) an action by the Respondent against the Appellant and KAH for the purported breach of the agreement as in the present appeal; or

(b) an action in the HTF suit by HTF against Cosmotine following the dishonor of the cheque,

for the recovery of the sum of RM2.3 million. The Respondent should go no further after the summary judgment was recorded that was the choice for remedies it had made. It should not be allowed to make a further claim for the said sum based on the breach of contract, a remedy from which it is precluded by virtue of the election.

[19] **As plaintiff's claim in this suit and third party proceedings in Nam's suit flowed from a breach of Assignment, it is now estopped from filing this suit as the facts and cause of action has merged**. In *Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783 it was stated as follows at page 791 and 793:

> What is *res judicata*? It simply means a matter adjudged, and its significance lies in its effect of creating an estoppel *per rem judicature*. When a matter between two parties has been adjudicated by a court of competent jurisdiction, the parties and their privies are not permitted to litigate once more the *res judicata*, because the judgment becomes the truth between such parties, or in other words, the parties should accept it as the truth; *res judicata pro veritate accipitur*. The public policy of the law is that it is in the public interest that there should be finality in litigation – *interest rei publicae ut sit finis litinum*. It is only just that no one ought to be vexed twice for the same cause of action – *nemo debet bis vexari pro eadem causa*. Both maxim has the further elevated status of a question of public policy; and
>
> On the other hand, the issue estoppel literally means simply an issue which a party is stopped from raising in a subsequent proceeding. However, the issue estoppels, in a nutshell, from a consideration of case law, means in law a lot more *ie*, that neither of the same parties or their privies in a subsequent proceeding is entitled to challenge the correctness of the decision of a previous final judgment in which they, or their privies, were parties. This sounds like explaining a truism, but it is the corollary from that statement that is all important and

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> that could have given birth to the controversies alluded to above; the corollary being that neither of such parties will allowed to adduce evidence or advance any argument to contradict such decision.
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> [20] From the JID, plaintiff obtained indemnity from defendant arising from the breach of the Assignment. It is estopped from raising the same issue of breach of the Assignment. **The issues and cause of action have also merged**.
>
> (emphasis added)

[34] A judgment on admission of facts granted under O. 27 r. 3 when granted by the court is a final judgment on the item of claim in respect of which it is granted. With the grant of the final judgment of the item of claim, the issues and the cause of action in respect of that item of claim have merged with the final judgment pursuant to the general principles on the doctrine of merger of judgment. Unlike O. 14 provisions on summary judgment, there is nothing in the provisions of O. 27 to prevent the application of the doctrine of merger of judgment to the balance amount in respect of the same item of claim for which the O. 27 judgment has been granted. The express statutory words in O. 14 saves the continued or further pursuit for the balance amount of the same item of claim from being barred or prohibited by the common law doctrine of merger of judgment; however, there is nothing in O. 27 to salvage the balance amount of the same item of claim from being caught by the doctrine of merger of judgment. Indeed, even the very express words "other question" in O. 27 r. 3 reinforces the result that only other question or other item of claim apart from the item of claim which has been granted the O. 27 judgment would be allowed to be continued to be determined or tried subsequent to the grant of the O. 27 judgment.

[35] This court also notes that under O. 22A of ROC 2012 (interim payment), a plaintiff in a situation where the defendant has admitted part of the claim or a lesser amount than the plaintiff's pleaded amount for that claim also has the procedural remedy of applying for an interim payment: see the decided cases of the Court of Appeal in *Josu Engineering Construction Sdn Bhd v. TSR Bina Sdn Bhd* [2016] 1 CLJ 1 and *David Chelliah v. Monorail Malaysia Technology Sdn Bhd & Anor* [2005] 1 CLJ 589 and the English Court of Appel's decision in *Re Stringman (A Minor)* [1994] 1 WLR 1653 and *Ricci Burns Ltd v. Toole & Anor* [1989] 1 WLR 993. The order of interim payment under O. 22A enables the plaintiff to get interim financial relief without the problem of *res judicata* or election or merger of judgment. After the order of interim payment, O. 22A expressly allows the same claim to be tried and determined on its substantive merits subsequent to the receipt of the interim payment, leaving the interim payment amount to be reconciled or adjusted upon the decision in the full trial later.

[36] In summing up on the question of law and the related procedural questions, this court holds that where the defendant has admitted part of an item of claim or has admitted a lesser amount of an item of claim than the plaintiff's pleaded amount of that item of claim, the plaintiff has the following choices:

(i) the plaintiff may accept the defendant's admitted part or amount as correct and apply for a judgment on admission of facts under O. 27, in which event the judgment when obtained under O. 27 would merge with the plaintiff's issues and cause of action in respect of that item of claim and the plaintiff would thereafter not be allowed to proceed for determination of the balance amount by way of another interlocutory application for summary judgment under O. 14 or by way of full trial; or

(ii) the plaintiff may reject the defendant's admitted part or amount as correct and thereafter proceed with the proceedings in the action as follows:

(a) apply for interim payment under O. 22A and obtain an order for interim payment, in which event the plaintiff would get interim financial relief without the problem of *res judicata* or election or merger of judgment, as O. 22A expressly allows the same claim to be tried and determined subsequent to the receipt of the interim payment after the order of interim payment;

(b) apply for summary judgment under O. 14 for that item of claim in which event the court would decide whether or not the plaintiff is entitled to the full amount of the plaintiff's pleaded claim in light of the entirety of the affidavit evidence as well as the defendant's admission of fact in respect of part of that item of claim, with the result that after the decision of the court on the O. 14 application; the court's decision and judgment on that item of claim would be delivered by (1) finally disposing of that item of claim by granting summary judgment for the full amount of the pleaded claim (if the court agrees with the plaintiff's entitlement to the claim and the pleaded amount of claim), (2) partly dispose of that item of claim by granting summary judgment for the part of the amount of the pleaded claim (if the court agrees with the plaintiff's entitlement to the claim but only in respect of part of the pleaded amount of claim), or (3) grant leave to defend in respect of the entirety of that item of claim and there would be full trial of the entirety of that item of claim (if the court finds that there is triable defence or other reason for full trial). In scenario (1) above, the summary judgment would constitute *res judicata* insofar as that item of claim is concerned, whereas in scenario (2) the balance amount of the pleaded claim would proceed to full trial pursuant to the express provisions of O. 14 r. 8 of ROC 2012;

A (c) leave the item of claim for full trial without any interlocutory application for judgment, in which event the court would proceed with full trial of the entirety of that item of claim, taking into account the defendant's admission of facts in respect of that item of claim.

B **[37]** In the premises, this court holds that the English Court of Appeal's decision in 1950 in the case of *Lancashire Welders Ltd v. Harland & Wolff Ltd* is no longer good law insofar as it concerns the question of the effect of a judgment on admission of facts in the context of the modern rules of court which contain the main underlying policy of court-controlled civil C proceedings under O. 34 and the main objectives of just, expeditious and economical disposal of civil actions.

[38] Although the plaintiff here in his affidavit-in-support of the O. 27 application has purported to state that his O. 27 application should not prejudice his claim for the balance amount of the liquidated damages, such D purported reservation of right is of no legal force and it does not prevent the operation of the estoppel by *res judicata* or the doctrine of merger of judgment: see the apex court's judgment in *Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd* quoted in para. 31 above.

E **Conclusion**

[39] In conclusion, this court has held and clarified in the present case that the plaintiff who has applied for and obtained judgment under O. 27 based on the defendant's admission of a lesser amount of the particular item of claim than the plaintiff's pleaded amount is not entitled to proceed to full F trial for the balance of the pleaded amount for the same item of claim.

[40] As the plaintiff's only claim in the present suit is for liquidated damages comprising of two sub-items and this court has given judgment under O. 27 for the liquidated damages under both the sub-items, there is no other issue or question to go for full trial of the present action. As such, no G case management date or direction was given after the O. 27 judgment on admission of facts has been given.

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